

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving 911 Reliability)	PS Docket No. 13-75
)	
Reliability and Continuity of Communications)	PS Docket No. 11-60
Networks, Including Broadband Technologies)	
)	

ORDER

Adopted: July 30, 2020**Released: July 30, 2020**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, we address a request by USTelecom – The Broadband Association (USTelecom) for waiver of the 911 reliability requirements in Section 9.19 of the Commission’s rules to provide broadband service providers an additional 90 days to file their annual 911 reliability certifications (Waiver Request).¹ The Waiver Request asserts that the COVID-19 pandemic has created unique challenges for providers that make it difficult to submit their certifications by the current deadline, October 15, 2020.² For the reasons stated herein, we find that USTelecom has failed to make the showing required for a waiver of the Commission’s rules and deny the Waiver Request.

II. BACKGROUND

2. After observing the Derecho storm’s severe impact on 911 networks across the Midwest in 2012, the Commission took steps to ensure that the nation’s 911 communications networks were reliable and resilient by requiring covered 911 service providers take reasonable measures to provide reliable 911 service.³ To demonstrate that they are satisfying this requirement, covered 911 service providers must annually certify to the Commission that they have taken “reasonable measures to provide reliable 911 service with respect to 911 circuit diversity, availability of central office backup power, and diverse network monitoring;” or they must certify to taking alternative measures that “are reasonably sufficient to mitigate the risk of failure or that one or more certification elements are not applicable to its network.”⁴ In establishing these annual certification requirements, the Commission aimed for

¹ USTelecom – The Broadband Association Request for Waiver, PS Docket Nos. 13-75, 11-60 (filed June 22, 2020), https://ecfsapi.fcc.gov/file/10622174457929/REQUEST%20FOR%20WAIVER_E-911_FINAL.pdf (Waiver Request).

² Waiver Request at 1.

³ See *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75 and 11-60, Report and Order, 28 FCC Rcd 17476, 17477, paras. 1-2 (2013) (*911 Reliability Order*); 47 CFR § 9.19(a)(4) (defining a “covered 911 service provider” as an entity that provides 911, E911, or [Next Generation 911 (NG911)] capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a [Public Safety Answering Point (PSAP)], statewide default answering point, or appropriate local emergency authority, or an entity that operates one or more central offices that directly serve a PSAP).

⁴ 47 CFR § 9.19(b).

certifications to contain enough information “to identify important weaknesses in 911 networks or a reasonable basis on which to hold service providers accountable for decisions affecting 911 reliability,” but not create “a far-reaching certification requirement [that] could impose a heavy burden on providers.”⁵ The Commission delegated to the Bureau the responsibility to “review the certifications and take additional action as appropriate.”⁶ Covered 911 service providers are required to submit their annual 911 reliability certifications to the Commission on October 15 of each year.⁷

3. On March 13, 2020, FCC Chairman Ajit Pai announced the Keep Americans Connected Initiative (Initiative) in response to the COVID-19 pandemic.⁸ “In order to ensure that Americans do not lose their broadband or telephone connectivity as a result of these exceptional circumstances,”⁹ Chairman Pai asked broadband service providers, telephone service providers, and their trade associations to pledge “not [to] terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic; waive any late fees that any residential or small business customers incur because of their economic circumstances related to the coronavirus pandemic; and open its Wi-Fi hotspots to any American who needs them” for sixty days, and later extended it until June 30, 2020.¹⁰ Chairman Pai also challenged companies to take action that goes “above and beyond” the pledge’s commitments.¹¹

4. In its Waiver Request, USTelecom asserts that “[t]he unique set of circumstances created by the COVID-19 national pandemic makes it challenging for providers to comply with the October 15, 2020, E911 certification filing deadline.”¹² USTelecom explains that, pursuant to the Initiative’s pledge, service providers have taken “extraordinary steps” to keep their customers connected to broadband service.¹³ USTelecom states that these steps include installing new service for customers that cannot currently pay for service, providing “safe service” with limited resources and with employees working remotely, and providing service with many employees unable to perform their typical job functions due to issues raised by the COVID-19 pandemic.¹⁴ USTelecom further asserts that “some service providers have placed a moratorium on network change management activities that could affect continuity of service – in particular, running down backup power sources as required by manufacturer testing – in order to minimize the risk of disruption to service.”¹⁵ USTelecom requests that the Commission “provide

⁵ See *911 Reliability Order*, 28 FCC Rcd at 17495, para. 54.

⁶ *Id.*

⁷ See 47 CFR § 9.19(d)(1) (“One year after October 15, 2014, a certifying official of every covered 911 service provider shall certify to the Commission that it has made substantial progress toward meeting the standards of the annual reliability certification described in paragraph (c) of this section.”); 47 CFR § 9.19(c) (“One year after the initial reliability certification described in paragraph (d)(1) of this section and every year thereafter, a certifying official of every covered 911 service provider shall submit a certification to the Commission as follows. . .”).

⁸ Press Release, FCC, Chairman Pai Launches The Keep Americans Connected Pledge (Mar. 30, 2020), <https://www.fcc.gov/document/chairman-pai-launches-keep-americans-connected-pledge>.

⁹ FCC, *Keep Americans Connected* (July 8, 2020), <https://www.fcc.gov/keep-americans-connected>.

¹⁰ *Id.*; Chairman Pai Launches The Keep Americans Connected Pledge *supra* note 8.

¹¹ FCC, *Companies Have Gone Above and Beyond the Call to Keep Americans Connected During Pandemic* (July 9, 2020), <https://www.fcc.gov/companies-have-gone-above-and-beyond-call-keep-americans-connected-during-pandemic> (calling on broadband providers to “relax their data usage limits in appropriate circumstances and take steps to promote remote learning and telehealth”).

¹² Waiver Request at 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

broadband service providers an additional 90 days to file its annual E911 certification due to the impact of the COVID-19 pandemic.”¹⁶ According to USTelecom, granting its Waiver Request “would serve the public interest while not undermining the purpose of the rules.”¹⁷

III. DISCUSSION

5. The Commission may waive its rules “on its own motion or on petition if good cause therefor is shown.”¹⁸ Waiver is appropriate if “special circumstances warrant a deviation from the Commission’s rule, and such deviation will serve the public interest.”¹⁹ Applicants seeking waiver face a “high hurdle” and must plead with particularity the facts and circumstances that warrant the Commission granting waiver.²⁰ USTelecom has not satisfied this burden because it fails to show that special circumstances warrant a deviation from Section 9.19 or that such deviation would serve the public interest.

6. The Waiver Request fails to show what special circumstances support a departure from Section 9.19 and the October 15, 2020 filing deadline for the Commission’s annual 911 reliability certification. In particular, the Waiver Request fails to state with sufficient particularity who needs relief from the Commission’s rule and why they need such relief. The Waiver Request fails to specify whether USTelecom is seeking relief on behalf of all covered 911 service providers that offer broadband services, all USTelecom members that offer broadband services, or solely the USTelecom members that have “placed a moratorium on network change management activities and whose employees have been focused on keeping consumers and businesses connected.”²¹ If USTelecom seeks an industry-wide or membership-wide waiver, the Waiver Request fails to establish that such broad relief is warranted. While USTelecom states that “some” providers have been unable to keep up with their typical testing activities, service providers “often” have limited resources, and “many” employees cannot perform functions they would typically perform,²² the limitations faced by some broadband service providers in some circumstances is insufficient to establish that special circumstances warrant extension of the deadline for all broadband service providers.²³

7. To the extent that waivers may be appropriate for individual service providers that face challenges arising from the COVID-19 pandemic, USTelecom has not identified those providers. Further, the Waiver Request also fails to adequately explain the particular challenges these individual service providers are facing, whether those challenges are expected to continue through the October 15, 2020 filing deadline, or how those challenges have specifically made it difficult for those providers to comply with Section 9.19. For example, it is unclear how the Initiative’s pledge, which is focused on customer billing practices and opening Wi-Fi hotspots, would require service providers “not to introduce any

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 2.

¹⁸ 47 CFR § 1.3.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

²⁰ *WAIT Radio v. FCC*, 418 F.2d at 1157 (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)).

²¹ Waiver Request at 1, 4.

²² *Id.* at 2.

²³ See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Petitions for Temporary Partial Exemption or Limited Waiver*, MB Docket No. 11-54, Memorandum Opinion and Order, 27 FCC Rcd 9630, 9638-39, para. 16 (MB 2012) (finding a waiver request overbroad where some of entities covered by the request would not need the relief sought).

additional risk to, or strain on, the network” as USTelecom claims.²⁴ While USTelecom notes that some service providers have placed a moratorium on backup power testing due to the risk of an extended outage,²⁵ this risk is inherent to backup power testing and not specific to the circumstances brought on by the COVID-19 pandemic. Accordingly, the Waiver Request has not shown that special circumstances warrant a waiver of Section 9.19 to provide broadband service providers an additional 90 days to file their annual 911 reliability certifications.²⁶

8. The Waiver Request also fails to show how a deviation from the Commission’s rules would serve the public interest. The annual 911 reliability certification’s purpose is to ensure that 911 networks are consistently reliable and resilient. Holding providers accountable for providing reliable 911 service depends on their submitting their 911 reliability certifications in a timely manner.²⁷ The Initiative’s pledge is meant to ensure that Americans maintain their broadband and phone connectivity during the COVID-19 pandemic, and we acknowledge that “ensur[ing] reliable and effective E911 service 24 hours a day, 7 days a week,” is consistent with the spirit of the pledge.²⁸ However, the Initiative’s pledge is not meant to excuse providers from conducting timely network auditing, testing, and maintenance that is essential to ensuring that Americans remain connected, including being provided with reliable, resilient 911 service at this time when they need it most. While the Commission noted in the *911 Reliability Order* that it sought to balance the public interest benefit of the 911 reliability certification against the burden it imposes on providers, USTelecom has not explained with sufficient particularity or clarity how the COVID-19 pandemic disturbs that balance, nor how a 90 day extension would restore it.²⁹ Therefore, we find that granting the Waiver Request would not serve the public interest.

9. While we acknowledge USTelecom’s observation that the Wireline Competition Bureau recently granted a limited waiver of the Commission’s broadband speed and latency testing requirements in the *Connect America Fund Waiver*, we believe that USTelecom’s Waiver Request is distinguishable from that grant of limited waiver.³⁰ First, rather than delay the Commission’s required testing deadlines, the *Connect America Fund Waiver*’s grant of limited waiver created conditions that would ensure that the Commission received accurate speed and latency data on schedule.³¹ Second, unlike here, the Wireline Competition Bureau could clearly identify the providers facing the hardship—those who had developed testing systems before a standardized template was available—as well as an approach to addressing the hardship that was consistent with the public interest goals of the testing.³² Finally, unlike USTelecom’s

²⁴ Waiver Request at 2-3.

²⁵ *Id.*

²⁶ Individual providers encountering hardship due to the COVID-19 pandemic may still be granted a waiver of the 911 reliability certification deadline, provided they make the showing required for a waiver of the Commission’s rules. A group may similarly be granted a waiver if the group can show with particularity that all group members are experiencing the same hardship due to the pandemic.

²⁷ See *911 Reliability Order*, 28 FCC Rcd at 17507-09, paras. 93-95 (explaining that certification should occur on an annual basis because less-frequent “circuit-auditing practices are often insufficient to provide assurances of reliable service;” and the Commission’s observations of the Derecho storm, data from the Commission’s Network Outage System Reporting System reports, and comments submitted to the record indicate that “annual circuit diversity audits will reveal conditions like [previously diverse 911 circuit that were re-configured without diversity], and enable providers to take steps to address any such issues in a timely manner”).

²⁸ Waiver Request at 3.

²⁹ See *911 Reliability Order*, 28 FCC Rcd at 17495, para. 54.

³⁰ Waiver Request at 3 (citing *Connect America Fund*, WC Docket No. 10-90, Order, 35 FCC Rcd 3067, 3067, para. 1 (WCB 2020) (*Connect America Fund Waiver*)).

³¹ See *Connect America Fund Waiver*, 35 FCC Rcd at 3068-69, paras. 5-7.

³² *Id.*

reasoning in its Waiver Request, the Wireline Competition Bureau's basis for granting limited waiver in the *Connect America Fund Waiver* was not premised on hardship due to the COVID-19 pandemic but on hardship that occurred well before the COVID-19 pandemic began.³³

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 9.19 of the Commission's rules, 47 CFR § 9.19, that USTelecom's request for waiver IS DENIED. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes
Chief, Public Safety and Homeland Security Bureau

³³ See *id.* at 3068, para. 5 ("Although the Speed and Latency Testing Templates were made publicly available last year, some carriers, based on the Commission's Performance Testing Orders, had developed their own internal testing systems prior to the Testing Templates being made available.").